

**CODE ENFORCEMENT OFFICE**

645A Pine St, PO Box 849  
Burlington, VT 05402-0849  
**VOICE (802) 863-0442**  
**FAX: (802) 652-4221**

TO: Development Review Board  
FROM: William Ward, Director of Code Enforcement  
DATE: October 4, 2011  
RE: 12-0265AP; 25 Orchard Terrace Appeal of - Zoning Violation # 217132

.....  
**Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

**Zone:** RH

**Ward** 3

**Owner/Appellant:** Robert Foley, Brett Foley, Michael McCarney/Mark Hall

**Request:** Appeal of Notice of Violation issued by Code Enforcement Office

**Location:** 25 Orchard Terrace Burlington, Vermont

**Tax Lot #** 044-4-197-000

**Overview:**

The NOV was issued after it was determined the stairs were missing and partial foundation removal had occurred on the side porch on the north elevation of a historic building listed on the state historic register. No zoning permit was granted for the work. A Stop Work Order was issued on August 11, 2011 and no site work has taken place since that date.

**Appeal Application:**

This appeal was filed in a timely manner (August 26, 2011) as required under Article 12 of the zoning ordinance and Ch 117 T.24 §4465 of the Vermont State Statutes (i.e. 15 days from the date of decision). The following is a summary of the appeal information:

The appellant contends the work constitutes repair and maintenance of an existing cinderblock foundation utilizing the same materials, design and building methods, and that the outward appearance of the feature will not change.

CDO Section 3.1.2 (c) states

**Exemptions:**

*The following shall be exempt from the requirements of this Ordinance and shall not be required to obtain a zoning permit:*

*4. The maintenance or repair of any exterior architectural feature, or its replacement in-kind, which does not involve a change in the location, design, material, or the outward appearance of the feature.*

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## **Findings:**

- In May 2011 the property was inspected by the Code Enforcement Office for compliance with Minimum Housing standards and a report of deficiencies was sent to the property owner. Deficiency #15 of 47 indicated the foundation needed repair. The deficiency report was accompanied by a letter which included in part "All plumbing, electrical, and building work performed must conform to applicable City Codes and Ordinances and necessary permits must be procured through the appropriate Inspection Services office of the Public Works Department (863-9094). Any exterior repairs/modifications or change of use may also be subject to review by the Planning and Zoning Department (865-7188). It is your responsibility to check with these Departments regarding permit requirements".
- On August 10, 2011 it was noted that the cement staircase and north porch of 25 Orchard Terrace had been removed from the building and were no longer located on the property. In addition, a section of foundation wall had been removed and no zoning or building permits were visible on the property. A record check of the City's Amanda permit data base confirmed that no zoning or building permits were applied for or issued for the project.
- On August 11, 2011 at 7:40 a.m. a Stop Work Order was posted on the site regarding the missing stairs and porch pursuant to 2.7.9 of the Burlington Comprehensive Development. An e-mail was sent to the property owner directing all work to stop until Zoning and Building Permits were issued for the project.
- A Notice of Violation was sent by certified mail on 8-11-11 to property owners.
- Property owner responded that the mason doing the work did not apply for a permit because he was doing repair work with the same materials and the entire job was less than \$1500.
- Planning & Zoning staff noted that the property is in a historic district and the building is on the historic register. It was indicated that even if it were a repair, photos would be required prior to work commencing to insure that the completed repair work did not result in any exterior changes to the building and that a non-applicability permit would have been issued.
- The property owner was directed to the Department of Planning and Zoning for a zoning permit and the Department of Public Works for a building permit.
- On September 9, 2011 the Building inspector issued a Building permit for the work indicating "Repairs to existing concrete block foundation ONLY respective to 06 IBC with approved materials in kind and with no change in use of area being repaired, design or foot print." The building inspector provided additional instructions which indicate a "permit that is required to reconstruct the porch area is a separate permit from what was just issued and will need both the Zoning Permit and Building Permit to be constructed back meeting today's codes and standards".
- The Code Enforcement photos of the construction area on August 11, 2011 show a Redstone foundation with a 14 foot long, 2 foot high gap in the foundation where the porch and steps once connected to the building. Code Enforcement photos on September 23, 2011 show a newly constructed cinderblock foundation filling the 14' by 2' gap.

## **Authority to stop work:**

Burlington CDO Sec. 2.7.9 Remedies

*If any street, building, structure, or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained or used in violation of this ordinance, or in violation of one or more conditions of a permit issued under this ordinance, the administrative officer shall institute in the name of the city any appropriate action (see Sec. 2.7.10 below), injunction or other proceeding to prevent, restrain, correct or abate*

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*such construction or use, and to prevent, in or about such premises, any act, conduct, business or use constituting a violation.*

**Recommended Motion:**

Uphold the decision to issue a Stop Work Order and Notice of Violation for removal of stairs and side porch of historic structure. Order the owners to obtain zoning permit approval for exterior work and that the any such work shall be in a manner consistent with CDO regulations particularly that all work be appropriate to the historic character of the structure as per Sec. 5.4.8.







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Historic Preservation  
05602

**HISTORIC SITES & STRUCTURES SURVEY**  
Individual Structure Survey Form

COUNTY: Chittenden	SURVEY NUMBER: 25 Orchard Terrace
TOWN: Burlington	NEGATIVE FILE NUMBER: 77-A-192
LOCATION:	UTM REFERENCES: Zone/Easting/Northing
COMMON NAME:	U.S.G.S. QUAD. MAP:
FUNCTIONAL TYPE:	PRESENT FORMAL NAME:
OWNER: Winooski Congregational Church	ORIGINAL FORMAL NAME: Mrs. Ray residence
ADDRESS: Burlington, VT	PRESENT USE: dwelling
	ORIGINAL USE: dwelling
	ARCHITECT/ENGINEER:
	BUILDER/CONTRACTOR:
ACCESSIBILITY TO PUBLIC: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Restricted <input type="checkbox"/>	PHYSICAL CONDITION OF STRUCTURE: Excellent <input checked="" type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor <input type="checkbox"/>
LEVEL OF SIGNIFICANCE: Local <input checked="" type="checkbox"/> State <input type="checkbox"/> National <input type="checkbox"/>	THEME:
GENERAL DESCRIPTION: Structural System	STYLE: Queen Anne
1. Foundation: Stone <input checked="" type="checkbox"/> Brick <input type="checkbox"/> Concrete <input type="checkbox"/> Concrete Block <input type="checkbox"/>	DATE BUILT: 1893
2. Wall Structure	
a. Wood Frame: Post & Beam <input type="checkbox"/> Balloon <input checked="" type="checkbox"/>	
b. Load Bearing Masonry: Brick <input type="checkbox"/> Stone <input type="checkbox"/> Concrete <input type="checkbox"/> Concrete Block <input type="checkbox"/>	
c. Iron <input type="checkbox"/> d. Steel <input type="checkbox"/> e. Other:	
3. Wall Covering: Clapboard <input checked="" type="checkbox"/> Board & Batten <input type="checkbox"/> Wood Shingle <input checked="" type="checkbox"/>	
Shiplap <input type="checkbox"/> Novelty <input type="checkbox"/> Stucco <input type="checkbox"/> Sheet Metal <input type="checkbox"/> Aluminum <input type="checkbox"/>	
Asphalt Shingle <input type="checkbox"/> Brick Veneer <input type="checkbox"/> Stone Veneer <input type="checkbox"/>	
Bonding Pattern:	Other: beaded board
4. Roof Structure	
a. Truss: Wood <input checked="" type="checkbox"/> Iron <input type="checkbox"/> Steel <input type="checkbox"/> Concrete <input type="checkbox"/>	
b. Other:	
5. Roof Covering: Slate <input checked="" type="checkbox"/> Wood Shingle <input type="checkbox"/> Asphalt Shingle <input type="checkbox"/>	
Sheet Metal <input type="checkbox"/> Built Up <input type="checkbox"/> Rolled <input type="checkbox"/> Tile <input type="checkbox"/> Other:	
6. Engineering Structure:	
7. Other:	
Appendages: Porches <input checked="" type="checkbox"/> Towers <input checked="" type="checkbox"/> Cupolas <input type="checkbox"/> Dormers <input type="checkbox"/> Chimneys <input checked="" type="checkbox"/>	
Sheds <input type="checkbox"/> Ells <input type="checkbox"/> Wings <input type="checkbox"/> Other:	
Roof Style: Gable <input checked="" type="checkbox"/> Hip <input type="checkbox"/> Shed <input type="checkbox"/> Flat <input type="checkbox"/> Mansard <input type="checkbox"/> Gambrel <input type="checkbox"/>	
Jerkinhead <input type="checkbox"/> Saw Tooth <input type="checkbox"/> With Monitor <input type="checkbox"/> With Bellcast <input type="checkbox"/>	
With Parapet <input type="checkbox"/> With False Front <input type="checkbox"/> Other:	
Number of Stories: 2 1/2	
Number of Bays: irregular	Entrance Location: left side
Approximate Dimensions:	
THREAT TO STRUCTURE: No Threat <input type="checkbox"/> Zoning <input type="checkbox"/> Roads <input type="checkbox"/> Development <input type="checkbox"/> Deterioration <input type="checkbox"/> Alteration <input type="checkbox"/> Other:	LOCAL ATTITUDES: Positive <input type="checkbox"/> Negative <input type="checkbox"/> Mixed <input type="checkbox"/> Other:

**ADDITIONAL ARCHITECTURAL OR STRUCTURAL DESCRIPTION:**

Massing - building is composed of 2 2 1/2 story salt box style sections together as an ell. The gable is oriented to the street on one section the long roof is on the south end. A turret begins at 2nd story of northeast corner and projects above the roof with a polygonal roof. A bay on north wall with shed roof. Porch on facade.

Penetration - 1/1 sash windows with plain surrounds. Various ornamental stained glass windows. Tower windows are colored multi-pane sash windows.

Entrance - Queen Anne panel door.

Cornice - cornice molding with fascia board.

Extras - radiating 1/4 fan in 2nd story facade. Bands of beaded boards, imbricated shingles and clapboards. Roof slates are banded and colored red, blue & grey. This house is super.

**RELATED STRUCTURES: (Describe)**

**STATEMENT OF SIGNIFICANCE:**

This extraordinary Queen Anne house is virtually the epitomy of the style with colored multi-pane windows, a turret, and complexities in roofline. It creates a striking picturesque effect which is rarely achieved to this degree in Burlington. This was the residence of Mrs. E. A. Ray.

**REFERENCES:**

City Directories

**MAP: (Indicate North In Circle)**



**SURROUNDING ENVIRONMENT:**

Open Land ☐ Woodland ☐  
Scattered Buildings ☐  
Moderately Built Up ☐  
Densely Built Up ☒  
Residential ☒ Commercial ☐  
Agricultural ☐ Industrial ☐  
Roadside Strip Development ☐  
Other:

**RECORDED BY:**

Clark Schuttle

**ORGANIZATION:**

VT Division for Historic Preservation

**DATE RECORDED:**

6/23/77

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Buell St./Bradley St. Historic District  
Burlington, Chittenden Co., Vermont

Section number 7 Page 3

Descriptions of individual resources within the district follow:

### 1. George Davis House (19-23 Orchard Terrace), c.1894

The 2 1/2 story, vinyl sided, Queen Anne building is supported on a raised, cut redstone basement. The structure consists of two perpendicular, rectangular, gabled blocks, forming "L" plan with various porches and a wing, all covered by a slate roof with bands of imbricated shingles. Two chimneys are located on the west slope of the ell.

The left side of the east facade is set back, with the lateral eaves paralleling the street; the gable front right side projects 1 bay. The east (front) facade of the main block (the gable front section, added c. 1912) is covered with 1/1 windows. A small window in the gable, adjacent to a 1/1 window, is shaped like a triangle with the points cut off, and appears to be a later change used for ventilation. The ell possesses 2 doors consisting of a large pane of frosted glass with 3, horizontal panels underneath, on the bay farthest to the left and on the main block under the roof of a porch which covers the front of the ell. The ell is also covered with two Queen Anne windows, one of which is 1/1 with a pane of frosted glass surrounded by smaller squares. The window sizes and patterns are irregular. Decorative brackets, a lattice skirt, and a simple rectangular balustrade decorate the 4 bay porch located in the "L" between the two masses. A small gable is centered on the shed roof of the porch.

The bays on the north facade of the main block are paired on the right side of the wall. A Queen Anne window is found on the right side of the ground floor. The windows on the south facade of the ell are irregularly spaced, and are varied in size. The gable possesses a small window.

On the west facade two gables are balanced on each end of the facade; the left gable is the rear of the main block and the right side consists of a small gabled extension off of the ell. A 2 story porch on the west facade spans the area between the two gables. A small shed roofed dormer sits on the roof of the ell, between the two gables. The window pattern is irregular across the remaining facade. The right, rear corner of the main block is cut away so that the gable is partially cantilevered. The doors leading onto the porch are sheltered within the right side of the second story of the porch.

George Davis is one of the first known residents of this house, and is listed as the treasurer of the Vermont Shade Roller Company in the Burlington City Directory.

### 2. Mrs. H.A. Ray House (25 Orchard Terrace), c.1893

This 2 1/2-story, gable roof dwelling is a unique example of the Queen Anne style, because

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Buell St./Bradley St. Historic District  
Burlington, Chittenden Co., Vermont

Section number 7 Page 4

of its elaborate plan and detailing. The plan is ell-shaped, with the main block having an unusual, asymmetrical gable front, which extends southward in front of a shed roof section between the main block and the ell. This extension of the main roofline forms the roof of a recessed porch, fronting the entrance, just to the left of the main block. The porch has turned spindle posts, a stick balustrade, a lattice skirt, and scroll-sawn brackets. The main ornamental feature on the house is a 2-story turret on the northeast corner of the main block. It has Queen Anne windows, molded cornices, fishscale shingling, and a 6-sided, imbricated slate roof. The other strikingly Queen Anne feature is the variety of sheathing materials covering the facade. The gables on both the ell and main block are closed with pent eaves, and both have fishscale shingling. The section of the front facade above the first floor level also has fishscale shingling, with a band of clapboards under the gable window, and a band of matchboard under the second floor window. A matchboard sunburst motif over the porch marks the entrance bay. The rest of the house is sheathed in clapboards. Windows are 1/1 with irregular placement, and interspersed among them are a number of small Queen Anne windows. Both the main block and the ell have clipped corners at the first floor level. A small shed roof section on the north side of the main block has a clipped corner, above which are scroll-sawn brackets. On the north side of the shed roof section is a secondary entrance beneath a shed roof hood. Behind the ell is a larger, 1 1/2-story shed roof section. A recently-added wooded fire escape extends westward from the north end of this section. According to present occupants, the house has been converted into student housing, with 8 bedrooms and a shared living area. The exterior appears to have been altered very little.

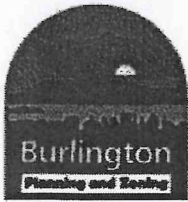
The Burlington Directory lists Mrs. H. A. Ray as the original occupant of the house.

### 3. Fred Gould House (37 Orchard Terrace), c.1899

A connected 1-bay garage and 2 1/2-story tower distinguish this 2 1/2-story, 3 x 3 bay, hip roofed, clapboarded Queen Anne home with some Colonial Revival details. Three sides of the pointed polygonal roofed tower located in the southeast corner are lighted, the heads and sills of the 1/1 windows stretching across the tower to form bands. Clapboards cover the areas between the windows and below the first story window while concave-curved clipped shingles sheathe the rest of the tower. A copper finial caps the slate roof.

The 1 1/2-story garage was attached to the rear of the left side of the house between 1919 and 1926 as indicated in Sanborn maps. A four sectioned garage door, each section being lit by 8 panes of glass and decorated by 2 horizontal panels, occupies most of the front facade. A vertical fixed sash window framed by small colored lights sits to the right of the garage door and a similar but horizontal window lights the upper 1/2 story. A pent roof caps this garage.





## Burlington Department of Planning and Zoning

149 Church Street, City Hall  
Burlington, VT 05401-8415  
[www.ci.burlington.vt.us/planning](http://www.ci.burlington.vt.us/planning)

PH: 802-865-7188 FAX: 802-865-7195 TTY: 802-865-7142

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DEPARTMENT OF  
PLANNING & ZONING

### Appeal of an Administrative Decision Request

Use this form to appeal any Administrative Decision or Notice of Violation - See Sec. 12.2.2 of the Zoning Ordinance.

**SUBJECT LOCATION ADDRESS:** 25 Orchard Terrace **ZONE:** \_\_\_\_\_

**Subject Property Owner:** Robert J. Foley; Brett Foley; Michael McCarney

**Appellant:** Robert J. Foley; Brett Foley; Michael McCarney

**Agent/Representative:** Mark G. Hall, Esq. / Paul Frank + Collins P.C.

**Mailing Address:** PO Box 1307

**City, St, Zip:** Burlington, VT 05402-1307

**Day Phone:** 802-658-2311 **Email:** mhall@pfclaw.com

**Appellant Signature:**  **Date:** August 26, 2011

Mark G. Hall, Esq.

for 25 Orchard Terrace - Foley, Foley & McCarney

In order for your request to be considered complete, the following information **must** be provided as applicable:

- ☐ The Appeal fee of \$135;
- ☐ Description of the decision under appeal;
- ☐ Description of the property subject to the appeal;
- ☐ Reference to the regulatory provisions applicable to the appeal;
- ☐ Relief requested by the appellant;
- ☐ Alleged grounds why such requested relief is believed proper under the circumstances.

PLEASE SEE ATTACHED

#### Office Use Only:

Check No. 96603 Amount Paid \$135 Zoning Permit # 12-0265AP

A. Description of decision under appeal:

Notice of violation, dated August 11, 2001, indicating that appellants must obtain a zoning permit for the repair of the foundation of 25 Orchard Terrace.

B. Description of the property subject to the appeal:

Existing residential structure at 25 Orchard Terrace, Burlington

C. Reference to the regulatory provisions applicable to the appeal:

Title 24, Chapter 151. Burlington Comprehensive Development Ordinance, Articles, 2, 3, 5, 12.

D. Relief requested by the appellant:

Reversal of the determination of the zoning compliance officers, as her decision is without basis in law.

E. Alleged ground why such requested relieve is believed proper under the circumstances:

The work involved is repair and maintenance of an existing cinderblock foundation, which was requested by the code officer. The same materials, design, and building methods of the existing foundation are being utilized, and the outward appearance of the feature will not change. Section 3.1.2(c) states that a zoning permit is *not* required for "the maintenance or repair of any exterior architectural feature, or its replacement in-kind, which does not involve a change in the location, design, material, or the outward appearance of the feature." Even if there were a requirement for a zoning permit stated in the ordinance, which there is not, the extension of zoning to repair and maintenance work exceeds the police powers of the City of Burlington under Title 24, and the Vermont and U.S. Constitutions.

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DEPARTMENT OF  
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**CODE ENFORCEMENT OFFICE**

645A Pine St, PO Box 849  
Burlington, VT 05402-0849  
**VOICE (802) 863-0442**  
FAX: (802) 652-4221

August 11, 2011

Mailed Certified Mail 7002 2030 0007 6234 3614  
And FIRST CLASS MAIL

ROBERT J FOLEY  
26 HILLCREST RD  
BURLINGTON VT 05401

BRETT FOLEY  
4 MEADOW DRIVE  
MILL VALLEY, CA 94941

MICHAEL MCCARNEY  
24 WHITE PLACE  
SOUTH BURLINGTON, VT 05403

**NOTICE OF VIOLATION AT:**  
25 Orchard TR, BURLINGTON, VT  
TAX LOT #044-4-197-000

ZV # 217132

Dear R. FOLEY, B. FOLEY, and M. MCCARNEY:

It has come to the attention of this office that a zoning violation exists at the above address.

**Description of Violation (NOV):** Removal and initial reconstruction of a side porch on the north elevation of historic building listed on the state register without zoning approval (see attached photos). Stop work order was issued.

Burlington Comprehensive Development Ordinance (CDO) Article(s): 2, 3, 5, 12, and 24 VSA §4451.

Please be advised that persons who violate the CDO may be subject to fines of up to one hundred dollars (\$100.00) for each day that a violation continues. You may submit an application to attempt to correct the violation, however, be advised application and filing fees are increased for zoning permits required to correct a zoning violation (see Violation Details Remedy Options #2 and CDO Section 2.7.8).

This correspondence is a formal notice of a zoning violation pursuant to 24 V.S.A §4451. You have seven (7) days from receipt of this notice to cure the referenced violation. Additional warnings for the violation are not required and will not be forthcoming. In the event that the violation is not cured/remedied as provided for in this notice, the City shall pursue enforcement of the violation as provided for by law.

This NOV is a decision of the Zoning Enforcement Officer, designee of the Burlington Zoning Administrator, and may be appealed to the Development Review Board in accordance with the provisions of CDO Sections 2.7.11 and 12.2.2 provided that such appeal is filed within fifteen (15) days of the date of this NOV (as indicated above), and accompanied by the appropriate fee in accordance with Sec. 3.2.4(a) of the CDO. Fee and complete application for the appeal shall be filed with the City's Department of Planning and Zoning (City Hall, 149 Church Street) by **4 pm on August 26, 2011**; an appeal shall not be perfected until the fee is received.

If you have any questions, please call me at (802) 863-0442.

Sincerely,

Jeanne Francis  
Zoning Compliance Officer

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Enclosures: Violation Details

Cc: Land Records for Tax Lot # 044-4-197-000

**VIOLATION DETAILS****LOCATION:** 25 Orchard TR**DECISION DATE:** August 11, 2011

**VIOLATION DESCRIPTION:** Removal and initial reconstruction of a side porch on the north elevation of historic building listed on the state register without zoning approval (see attached photos). Stop work order was issued.

**FINDINGS:**

- o Code Office side porch on north elevation of building had been removed and construction had begun, without approved permits.
- o Stop work order issued. Owners were notified to obtain all necessary permits.

**REMEDY OPTIONS:** Within seven (7) days from receipt of this notice you may cure the violation by:

1) - Removing the violation noted above, **restoring the Premises to its prior state, and informing the Code Enforcement Office that the violation has been removed so our office may verify compliance; or**

2) - Obtaining approval from the City's Department of Planning and Zoning for removal and construction of a side porch on the north elevation of building without an approved zoning permit (permit application fee is doubled if complete application is submitted within seven days from receipt of the NOV, tripled if a complete application is submitted 7-15 days from receipt of the NOV, or triple plus \$75 per hour of Code Enforcement staff time (up to \$500) if a completed application is submitted after 15 days from date of NOV receipt). See CDO Section 2.7.8. **PLEASE NOTE:** If the zoning permit request is denied, the violation is **NOT** cured. Owner shall be required to remove the violation as noted in #1 above or request an agreement as noted in #3 below within five (5) business days from date of the permit denial to remedy the violation; **or**

3) - Entering into an Agreement with the City of Burlington to extend deadlines in which to come into compliance with the City's ordinance (**administrative fees required**).

**APPEAL RIGHTS:** You have the right to appeal the enforcement officer's decision that a zoning violation exists on your property to the Development Review Board in accordance with the provisions of Articles 2.7.11 and 12.2.2 of the CDO within fifteen (15) days **from the date of this notice**. **The deadline for filing an appeal is 4 pm on August 26, 2011.** Submit a complete application with ZV# and appropriate fee to the Department of Planning and Zoning, accompanied by a memo stating the ZV#, the owner's name and address, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief you are requesting, and the alleged grounds why such relief is believed proper under the circumstances. *Failure to appeal constitutes admission that the violation exists, and the decision of the enforcement officer shall be binding 24 V.S.A §4472(d).*

**REGULATION** CDO Article(s): 2, 3, 5, 12 and 24 VSA §4451

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